

R E M A R K S

Claims 1, 2, 4 and 7-17 are now in this Application, and are presented for the Examiner's consideration.

Objection to Drawings

Fig. 3 was objected to as being a freehand drawing which is not clear.

Enclosed is a clearer Replacement Sheet of Fig. 3.

Accordingly, it is submitted that the objection to the drawings has been overcome.

Prior Art Rejections

Claims 1, 2 and 7-11 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,636,938 to Faltersack.

In the first place, independent claim 1 has been amended to include the limitations of claim 3, that one of the tubes (1) has holes (4) in a side facing the other tube to accommodate one end of the rods serving as the grilling surface, and a top quarter of a circumference of the other tube (2) facing the one tube has slots (5) to match the number of holes for accommodating opposite ends of the rods. See page 3, lines 5-12 of the present application for support thereof.

In addition, claim 1 has been further amended to recite an additional feature which refers to the arrangement of connecting

rods connected to the ends of the tubes, namely, that the connecting rods (10) connect the two tubes (1, 2) and run through holes in the two opposite tube walls at the ends of the tubes, both connecting rods (10) being provided with tightening arrangements (wing nuts 11) for pulling together the two tubes to form a stable grilling surface. Support for the latter limitation is found at page 3, lines 23-28 of the present application. By this tightening action of the wing nuts 11, a stable grilling surface is created.

The only other independent claim now in the application is claim 4 which has been written in independent form, and which has also been further amended to include the same limitation of connecting rods to connect the two tubes and which run through holes in the two opposite tube walls at the ends of the tubes, with both connecting rods being provided with tightening arrangements for pulling together the two tubes to form a stable grilling surface.

Since this rejection did not include claims 3 and 4, it is submitted that the only two independent claims now in the application, namely claim 1 (which includes the limitations of claim 3) and claim 4, overcome the rejection based on *Faltersack* alone.

It will be appreciated that the picnic grill of the present claimed invention can be assembled easily by inserting the rods

for forming the grilling surface into the holes in the first tube and inserting the opposite ends of the rods in the slits in the second tube. However, there is still the danger that the ends of the rods which are accommodated in the slits might fall out if the grill is not treated properly. This is avoided by tightening the two tubes together with the tightening arrangements, namely, the wing nuts.

Further, if the slits on the second tube only extend over a top quarter of a circumference of this tube, it is easily understood that the rods cannot fall out any longer in the tightened position. Therefore, there is a synergistic effect between the features of:

- a) the holes on the first tube,
- b) the slits on the second tube, and
- c) the connecting rods with the tightening arrangements.

The same applies to the second embodiment with an unbroken longitudinal slit in the second tube. By tightening the tubes together, the rods can be fastened. After use, it is sufficient to loose the tightening arrangements (wing nuts) at the connecting rods at the respective ends of the tube, and to pull the tubes apart. Then, the rods can easily be taken out of the slits and the holes.

Faltersack fails to disclose or even remotely suggest any slots or both connecting rods including tightening arrangements,

as recited in claim 1, or any unbroken longitudinal slit, the slots or both connecting rods including tightening arrangements, as recited in claim 4.

It is submitted that these features, together with the connecting rods, provide a clear distinction over Faltersack.

In addition, claim 7 recites a notch at an end edge of one of the tubes for cleaning the rods which form the grilling surface. This is shown by notch 6 at the end edge in Fig. 2. It is respectfully disputed that there is a notch at all in Faltersack.

It was stated that there is a notch where the wing nut 26 attaches. However, Faltersack merely discloses an aligned hole 18a, a wing nut 26 and a washer 25. There is no disclosure or even a remote suggestion of a notch thereat. Even if there is a notch thereat, claim 7 has been amended to recite that the notch is at an end edge. This has the advantage that the openings for the connecting rods will not be clogged with material wiped from the grilling rods if the notch was provided where the wing nut 26 is positioned in Faltersack.

Accordingly, it is respectfully submitted that the rejection of claims 1, 2 and 7-11 under 35 U.S.C. §102(b), has been overcome.

Claim 3 was rejected under 35 U.S.C. §103(a) as being obvious from Waltersack in view of U.S. Patent No. 6,155,162 to Wang.

The remarks made above in regard to Waltersack are incorporated herein.

Since the limitations of claim 3 have been incorporated into claim 1, this rejection will be discussed in relation to amended claim 1.

It was stated that one of the brackets 4 of Wang has holes to accommodate the rods, and a top quarter of a circumference of the other bracket facing the one bracket has slots 40 (Fig. 1) to match the number of holes for the opposite ends of the slots. It was further stated that the shape of the rectangular bracket versus the cylindrical shape of the tube is not relevant.

However, as discussed at page 3, lines 10-15 of the present application, because the slots 5 of the present invention run through an angle of about 90 degrees (top quarter of a circumference of the tube), when the two tubes 1 and 2 are pushed towards each other after inserting the rods 3, the rods 3 pass through the slots 5 and far enough into the tube to ensure that they cannot be lifted vertically out of position on this side either.

Thus, it is important from the standpoint of the present claimed invention that the hollow profiles include tubes, that

is, so that an effective "hood" is formed that prevents the rods 3 from being lifted out when the grill is assembled. In other words, if the slot occupies 90 degrees, starting from a 12 o'clock position on the tube, it will extend down to the 9 o'clock position on the tube. The portion of the tube from the 12 o'clock position to the 3 o'clock position will serve as a "hood" to prevent the rods 3 from being lifted up.

In this regard, claim 1 has been amended to recite that a top quarter of a circumference (that is, 90 degrees) of the other tube facing the one tube has slots to match the number of holes for accommodating opposite ends of the rods such that the opposite ends of the rods cannot be lifted vertically out of the slots of the other tube.

However, because Wang only provides a rectangular bracket, Wang must provide its slots 40 with an L-shaped profile opening that extends in the lengthwise direction of bracket 4. As shown in Fig. 3B of Wang, this means that the skewer 17 enters opening 400, and then must laterally be moved under hook portion 402 into cavity 404 to retain end 19 therein. To remove the same, the reverse operation is performed, namely, the end 19 is moved down in cavity 404, to the left in Fig. 3B, and then lifted up. This renders the Wang construction more complicated and also more difficult to use.

To the contrary, because tubes are used in the present claimed invention with a top quarter of a circumference of the tube having slots, the ends of the rods cannot be lifted vertically out of the slots of the tube, unless the grill is taken apart by removing or loosening the connecting rods 10.

In this regard, claim 1 has been amended to recite that "a top quarter of a circumference of the other tube facing the one tube has slots to match the number of holes for accommodating opposite ends of the rods such that the opposite ends of the rods cannot be lifted vertically out of the slots of the other tube."

It is submitted that these limitations are nowhere disclosed or even remotely suggested in Wang.

Further, it is submitted that, because of the different construction of Faltersack (tubes) and Wang (rectangular brackets), any combination of these references would mean that the tubes of Faltersack would be replaced by the rectangular brackets of Wang. In such case, the limitation of one tube fitting inside the other tube would not be provided.

Further, it is noted that the rods 17 of Wang are skewer rods. Thus, the rods must be inserted through the holes in the opposite bracket, the food skewered thereon, and then the free ends 19 of the rods 17 must be inserted into the slots 40 in rectangular bracket 4. Claim 1 herein, on the other hand,

recites that the rods form a grilling surface. There is no grilling surface provided by skewers 17.

In addition, Wang fails to disclose or even remotely suggest two connecting rods to connect the two tubes so as to run through holes in the two opposite tube walls at the ends of the tubes, each of the connecting rods being provided with a tightening arrangement for pulling together the two tubes to form a stable grilling surface, as also recited in amended claim 1.

Thus, even if Faltersack and Wang are combined, there would still be no disclosure or suggestion of:

a) a top quarter of a circumference of the other tube facing the one tube has slots to match the number of holes for accommodating opposite ends of the rods such that the opposite ends of the rods cannot be lifted vertically out of the slots of the other tube, and

b) two connecting rods to connect the two tubes so as to run through holes in the two opposite tube walls at the ends of the tubes, each of said connecting rods being provided with a tightening arrangement for pulling together the two tubes to form a stable grilling surface.

Accordingly, it is respectfully submitted that the rejection of claim 3 under 35 U.S.C. §103(a), as applied to amended claim 1, has been overcome.

Claims 4-6 were rejected under 35 U.S.C. §103(a) as being obvious from Faltersack in view of U.S. Patent No. 3,461,634 to Earl in view of U.S. Patent No. 3,191,592 to Lorbacher.

The remarks made above in regard to Faltersack are incorporated herein.

Earl was cited for disclosing unbroken slits in the tubes 24 and 26 for accommodating rods 34. However, in order to connect the ends of the rods together, Earl uses two sets 36, 38 of interconnected links, each set forming a chain. This, of course, greatly complicates the construction.

Lorbacher was cited for disclosing channels 24, 25, with channel 24 having holes 28 (Fig. 7) and channel 25 having notches 30 (Fig. 6). However, in order to prevent the ends of the rods 29 being lifted up from the notches 30, Lorbacher requires a pivoting cover strip 31, which greatly complicates the construction.

However, the present claimed invention requires that one of tubes (1) has holes (4) in a side facing the other tube to accommodate one end of the rods which form the grilling surface, and the other tube (2) includes:

- a) an unbroken longitudinal slit (18) on a side facing the one tube, and

- b) slots (19) in one edge of the slit in which to place opposite ends of rods.

In order to arrive at this construction, it would have been necessary for one skilled in the art to replace the holes 18 or 19 in the tubes 16, 17 of Faltersack with a lengthwise slit, as taught by Earl, and then to modify the lengthwise slit so that an edge thereof has slots, as taught by Lorbacher.

However, it is submitted that this is not an "obvious" combination, and would not be realized by one skilled in the art, without using hindsight of the present claimed invention.

Specifically, there is no logical reason nor any suggestion in the art for modifying Faltersack to remove the holes and replace the same with a lengthwise slit as in Earl. This is so, specifically, in view of the much more complicated arrangement in Earl which uses chains to secure the ends of the rods in the lengthwise slits. Lorbacher uses rectangular plates, rather than tubes, where the notches 30 are open at their upper ends. There would be no logical reason nor any suggestion in the art for modifying Lorbacher to provide notches which are at one edge of the lengthwise slit thereof.

It is well established that an Examiner cannot arbitrarily pick and choose elements from the prior art in a piecemeal fashion to construct the claimed invention, without some direction from the prior art.

It has been further held that modification unwarranted by the disclosure of a reference is improper. It is submitted that

the failure to indicate anywhere in the record any reason or basis for altering of the references militates against the rejection. Thus, combining these references as suggested, could only result from impermissible hindsight utilizing applicant's own disclosure to construct the present claimed invention from bits and pieces of the prior art.

In this regard, the presence of an unexpected result is also persuasive of patentability. In the present instance, the lengthwise slit allows the ends of the rods to be inserted in the tube, while the slots seat the ends of the rods at a particular spaced relation in the tube, and because of this arrangement, the upper edge of the slit functions as a "hood" which prevents the rods from being lifted up, contrary to Lorbacher.

In addition to the above limitations, claim 4 has been further amended to recite two connecting rods to connect the two tubes so as to run through holes in the two opposite tube walls at the ends of the tubes, each of the connecting rods being provided with a tightening arrangement for pulling together the two tubes to form a stable grilling surface. This limitation further distinguishes from Faltersack, for the same reasons given above in regard to claim 1. Neither Earl nor Lorbacher disclose or suggest any such connecting rods.

Accordingly, it is respectfully submitted that the rejection of claims 4-6 under 35 U.S.C. §103(a), has been overcome.

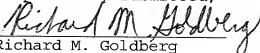
If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

In the event that this Paper is late filed, and the necessary petition for extension of time is not filed concurrently herewith, please consider this as a Petition for the requisite extension of time, and to the extent not tendered by check attached hereto, authorization to charge the extension fee, or any other fee required in connection with this Paper, to Account No. 07-1524.

The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 07-1524.

In view of the foregoing amendments and remarks, it is respectfully submitted that Claims 1, 2, 4 and 7-17 are allowable, and early and favorable consideration thereof is solicited.

Respectfully submitted,


Richard M. Goldberg
Attorney for Applicant
Registration No. 28,215

25 East Salem Street
Suite 419
Hackensack, New Jersey 07601
TEL (201) 343-7775
FAX (201) 488-3884
e-mail: goldbergpat@earthlink.net